

# HOUSE BILL 954

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By: **Delegates Kipke, Afzali, Boteler, Eckardt, Elliott, Frank, George, Kach, Krebs, McComas, McConkey, Norman, Ready, Schulz, Stocksdales, and Szeliga**

Introduced and read first time: February 10, 2012

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Health Care Decisions Act – Petitions by Surrogates – Court Actions**

3 FOR the purpose of authorizing a court to take certain actions if the court finds by a  
4 certain standard and on the petition of a certain individual that a certain  
5 decision by the health care agent of a patient violates the patient's advance  
6 directive or the wishes of the patient determined in accordance with certain  
7 standards; providing that certain individuals may not be denied access to a  
8 certain patient's medical records for certain purposes; requiring the court to  
9 ensure that certain individuals are allowed to have certain visitation rights;  
10 requiring a court to require the provision of life-sustaining procedures for a  
11 certain patient during the pendency of a certain action; and generally relating  
12 to court actions relating to petitions by surrogates under the Health Care  
13 Decisions Act.

14 BY repealing and reenacting, with amendments,  
15 Article – Health – General  
16 Section 5–612  
17 Annotated Code of Maryland  
18 (2009 Replacement Volume and 2011 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Health – General**

22 5–612.

23 (a) (1) A health care provider for an individual incapable of making an  
24 informed decision who believes that an instruction to withhold or withdraw a

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 life-sustaining procedure from the patient is inconsistent with generally accepted  
2 standards of patient care shall:

3 (i) Petition a patient care advisory committee for advice  
4 concerning the withholding or withdrawal of the life-sustaining procedure from the  
5 patient if the patient is in a hospital or related institution; or

6 (ii) File a petition in a court of competent jurisdiction seeking  
7 injunctive or other relief relating to the withholding or withdrawal of the  
8 life-sustaining procedure from the patient.

9 (2) In reviewing a petition filed under paragraph (1) of this subsection,  
10 the court shall follow the standards set forth in §§ 13-711 through 13-713 of the  
11 Estates and Trusts Article.

12 (b) (1) On petition of the patient's spouse, domestic partner, a parent,  
13 adult child, grandchild, brother, or sister of the patient, or a friend or other relative  
14 who has qualified as a surrogate under § 5-605 of this subtitle to a circuit court of the  
15 county or city in which the patient for whom treatment will be or is currently being  
16 provided, withheld, or withdrawn under this subtitle resides or is located, the court  
17 may enjoin that action upon finding by a preponderance of the evidence that the action  
18 is not lawfully authorized by this subtitle or by other State or federal law.

19 (2) IF A PETITION FILED UNDER PARAGRAPH (1) OF THIS  
20 SUBSECTION ALLEGES THAT A DECISION ABOUT HEALTH CARE FOR A PATIENT  
21 MADE BY THE PATIENT'S HEALTH CARE AGENT OR BY THE PATIENT'S SPOUSE,  
22 DOMESTIC PARTNER, A PARENT, ADULT CHILD, GRANDCHILD, BROTHER, OR  
23 SISTER OF THE PATIENT, OR A FRIEND OR OTHER RELATIVE WHO HAS  
24 QUALIFIED AS A SURROGATE UNDER § 5-605 OF THIS SUBTITLE VIOLATES THE  
25 PATIENT'S ADVANCE DIRECTIVE OR, IF THERE IS NO ADVANCE DIRECTIVE, THE  
26 WISHES OF THE PATIENT AS DETERMINED BY THE STANDARDS IN § 5-605(C) OF  
27 THIS SUBTITLE, THE COURT MAY:

28 (I) ENJOIN THAT ACTION ON FINDING BY A  
29 PREPONDERANCE OF THE EVIDENCE THAT THE ACTION IS IN VIOLATION OF THE  
30 PATIENT'S ADVANCE DIRECTIVE OR THE WISHES OF THE PATIENT AS  
31 DETERMINED BY THE COURT; AND

32 (II) 1. LIMIT OR REMOVE THE AUTHORITY OF THE  
33 HEALTH CARE AGENT OR SURROGATE WHO CONSENTED TO THE ACTION THAT IS  
34 THE SUBJECT OF THE PETITION AND APPOINT A SUBSTITUTE HEALTH CARE  
35 AGENT OR SURROGATE; OR

36 2. REQUIRE THE HEALTH CARE AGENT OR  
37 SURROGATE WHO CONSENTED TO THE ACTION THAT IS THE SUBJECT OF THE

1 PETITION TO CONSULT WITH OR OBTAIN THE CONSENT OF ANOTHER  
2 DESIGNATED ALTERNATIVE HEALTH CARE AGENT OR SURROGATE FOR FUTURE  
3 DECISIONS REGARDING THE HEALTH CARE OF THE PATIENT.

4 (3) A SURROGATE WHO FILES A PETITION UNDER THIS SECTION  
5 AND A HEALTH CARE AGENT OR SURROGATE WHO IS THE SUBJECT OF A  
6 PETITION UNDER THIS SECTION MAY NOT BE DENIED ACCESS TO THE PATIENT'S  
7 HEALTH CARE RECORDS FOR PURPOSES OF PURSUING OR DEFENDING AN  
8 ACTION UNDER THIS SECTION.

9 (C) THE COURT SHALL ENSURE THAT ANY HEALTH CARE AGENT,  
10 INDIVIDUAL, OR GROUP THAT QUALIFIES AS A SURROGATE UNDER § 5-605 OF  
11 THIS SUBTITLE IS ALLOWED TO HAVE REASONABLE VISITATION WITH THE  
12 PATIENT.

13 (D) DURING PENDENCY OF AN ACTION, INCLUDING ANY APPEALS,  
14 UNDER THIS SUBSECTION REGARDING AN ACTION TO WITHHOLD OR WITHDRAW  
15 A LIFE-SUSTAINING PROCEDURE FROM A PATIENT THAT IS LIKELY TO RESULT  
16 IN OR HASTEN THE DEATH OF THE PATIENT, THE COURT SHALL REQUIRE  
17 PROVISION OF THE LIFE-SUSTAINING PROCEDURE UNTIL A FINAL ORDER IS  
18 ISSUED.

19 [(c)] (E) Except for cases that the court considers of greater importance, a  
20 proceeding under this section, including an appeal, shall:

- 21 (1) Take precedence on the docket;
- 22 (2) Be heard at the earliest practicable date; and
- 23 (3) Be expedited in every way.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 October 1, 2012.